

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1338 of 2017
& C.M.P.No.6219 of 2017

R.Sathiyarayanan

.. Petitioner

Vs.

Balasubramania Gupta (died)

1.Manjula

2.Priya

3.Brinda

4.Pradeep Gupta

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 30.08.2016 in I.A.No.712 of 2016 in O.S.No.291 of 2000 on the file of the learned Additional District Munsif, Tindivanam.

For Petitioner : Mr.D.Ravichander

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 30.08.2016 in I.A.No.712 of 2016 in O.S.No.291 of 2000 on the file of the learned Additional District Munsif, Tindivanam.

2.The petitioner is the defendant and the respondents are the plaintiffs in O.S.No.291 of 2000. The plaintiffs/respondents have filed the suit in O.S.No.291 of 2000 for permanent injunction restraining the defendant from raising a wall in the suit property and installing electric motor pumpset in the well on the rear side of the property. The defendant/petitioner has filed I.A.No.712 of 2016 to stay the trial of the suit till the disposal of the second appeal in S.A.No.703 of 2012 on the file of this Court and the same is still pending.

3.According to the petitioner, the parties and the property of the suit in O.S.No.291 of 2000 are one and the same as that of the parties and the property in O.S.No.207 of 2004.

4.The suit in O.S.No.207 of 2004 filed by the first respondent for declaration of title to the suit property and for recovery of possession of the same on the basis of the Will dated 22.03.1971 alleged to have been executed by Kumudavalli Thayar and the same was dismissed. Aggrieved over the same, the first respondent has preferred A.S.No.85 of 2005 on the file of the learned Additional Subordinate Judge, Thindivanam and the same was

allowed in favour of the respondents, against which, the petitioner has preferred second appeal in S.A.No.703 of 2012 before this Court and the same is pending. Therefore, the petitioner has prayed for stay of O.S.No.291 of 2000 till the disposal of the second appeal.

5. The respondents filed a counter and opposed the averments made in the application and submitted that O.S.No.291 of 2000 is not a subsequent suit, it is a earlier suit filed by the respondents. It is further stated in the counter that the cause of action for both the suits are different and the same can be entertained only in the second appeal and with regard to the subsequent suit, the present application in O.S.No.291 of 2000 is not maintainable.

6. The Trial Court after considering the averments mentioned in the affidavit, counter affidavit, materials available on record and also the scope of Section 10 of C.P.C., dismissed the application holding that O.S.No.291 of 2000 is the earlier suit and therefore, the application is not maintainable, against which, the present Civil Revision Petition has been filed by the defendant/petitioner.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. The petitioner has filed I.A.No.712 of 2016 under Section 10 of C.P.C., for stay of O.S.No.291 of 2000 till the disposal of the second appeal in S.A.No.703 of 2012 and the said section runs as follows:

“10.Stay of suit: No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigation under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.”

9. A reading of the above said section would clearly show that when the issues involved in both the suits are directly and

substantially involved in the subsequent suit, the subsequent suit can be stayed pending previously instituted suit between the same parties. In the present case, O.S.No.291 of 2000 is not a subsequent suit. It is to be noted that the petitioner has not filed the plaint in O.S.No.207 of 2004. Therefore, without filing the plaint, the trial of the suit in O.S.No.291 of 2000 cannot be stayed. If the issues involved in both the suits are one and the same, the subsequent suit can be stayed. But in the case on hand, in the so called subsequent suit viz., O.S.No.207 of 2004, the plaint has not been filed. Therefore, Section 10 of C.P.C. is not applicable. The learned trial Judge considering all these aspects, dismissed the I.A. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 30.08.2016.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.04.2017

Index : Yes

dm/kj

V.M.VELUMANI, J.

dm/kj

To

The Additional District Munsif
Tindivanam.

C.R.P.(PD)No.1338 of 2017
& C.M.P.No.6219 of 2017

11.04.2017

<http://www.judis.nic.in>